compensation and costs. Section 294(ii) of the CPC also empowers the Court to direct the offender to pay the costs of the prosecution or some portion thereof within such period and by such instalments as may be directed.

(5) police supervision (see s. 295 to 299 of the CPC).

(6) bonds for good behaviour (see s. 173A and 294 of the CPC); and

(7) orders under the Juvenile Courts Act 1947 ("the JCA"). Section 12(1) of the JCA lists the orders which can be handed down. They include: admonish and discharge; a discharge upon the offender entering a bond to be of good behaviour; committal to the care of a relative or other fit person; an order for his parents or guardian to execute a bond to exercise proper care and guardianship; a probation order under s. 21 of the JCA; an order of committal to an approved school or Henry Gurney School; an order to pay a fine, compensation or costs; and imprisonment, if the offender is a young person.

In construing a statute, the Court must always be wary and should not attempt to give the statute an effect that it is a worthless piece of legislation (*Smith Kline & French Laboratories Ltd. v. Salim* (Malaysia) Sdn. Bhd [1989] 2 MLJ 380, 382). It is also germane to state that the Court must give effect to the clear and expliclt language of the enacting words of the section and cannot by any stretch of imagination disregard them unless it is apparent that some other meaning is intended (*PP v. Cho Beow Hin* [1982] 1 MLJ 135). Again, it had been said that where the meaning of the words in the statute are plain and unambiguous, Judges should not invent fancy ambiguities (*Duport Steels Ltd. v. Sirs* [1980] 1 All ER 529, 541). And finally, the first task of the Court is to find out the intention of the legislature for the words of a statute speak the intention of the legislature (Maxwell on **Interpretation of Statutes,** 12 Edn., pp. 1 and 2). Thus, the clear words in bracket of the second limb in s. 320 of the CPC refer only to an appeal against a sentence of fine and cannot be read to include a composite sentence of both imprisonment and a fine plus a penalty like the present appeal. Clearly, therefore the death of the appellant brought an immediate end to his appeal.

**TENG CHANG KHIM**

**v.**

**SURUHANJAYA PILIHANRAYA, MALAYSIA**

HIGH COURT, KUALA LUMPUR
DATO' WAN ADNAN BIN ISMAIL J.
[ORIGINATING SUMMONS NO.R2-24-90-93]
16 APRIL 1994

***ELECTION LAW: Election Commission proposing recommendations affecting constituency - Plaintiff objecting to proposed recommendations - Election Commission calling for local enquiry - Plaintiff applying to be represented by advocate & solicitor at hearing of enquiry - Plaintiff's application rejected - Whether plaintiff had a legal right to be represented by an advocate & solicitor at the local enquiry.***

The defendant proposed recommendations affecting the Siputeh Parliamentary Constituency P101 (the constituency) under s. 4 of Part 11 of the Thirteenth Schedule (the said Schedule) to the Federal Constitution. The plaintiff and 122 other registered voters of the constituency signed a memorandum objecting to the proposed recommendations. The defendant held a local enquiry as prescribed by s. 5 of Part 11 of the said Schedule. The plaintiff attended the enquiry and orally applied to be represented by an advocate & solicitor which application was rejected by the defendant.

The plaintiff sought a declaration that he had a legal right to be represented by an advocate and solicitor at the local enquiry. The plaintiff also sought a declaration that the denial by the defendant in allowing the plaintiff to be represented by an advocate and solicitor at the said enquiry has rendered the proceedings null and void, unconstitutional and of no effect thereby rendering the recommendations for Parliamentary and State Constituencies in the States of Malaya as reviewed by the defendant in 1993 a nullity.

**Held:**

**[1]** As there is no provision in the Federal Constitution particularly the said Schedule which gives the plaintiff the right to be represented by Counsel at the enquiry, the plaintiff has no right to be legally represented.

**[2]** It is at the discretion of the defendant whether or not to allow the plaintiff to be represented by Counsel at the enquiry. If the discretion has been properly exercised the Court will not interfere.

**[3]** The plaintiff does not allege improper exercise of the discretion as his contention is that the defendant has no discretion at all in the matter. Be that as it may, the evidence adduced shows that the defendant had exercised their discretion properly.

**[4]** The plaintiff was not denied a reasonable opportunity of being heard at the enquiry. The document containing his objections and proposals which he submitted to the defendant at the enquiry was quite comprehensive. It could not be said that the defendant has denied the plaintiff a reasonable opportunity of being heard merely because it has refused the plaintiff's request to be represented before it by an advocate and solicitor.

*[Plaintiff's application dismissed with costs].*

**Cases referred to:**
*Enderby Town Football Club Ltd. v. Football Association Ltd [1970] 3 WLR 1021* ***(foll)***
*Sithambaran v. Attorney-General [1972] 2 MLJ 175* ***(refd)***
*V.C. Jacob v. Attorney General [1970] 2 MLJ 133* ***(refd)***

**Legislation referred to:**
Commissions of Enquiry Act 1950, s.18
Federal Constitution, Thirteenth Schedule, Part 11, ss. 4, 5, 6, 8, 18

*For the plaintiff- Karpal Singh; M/s. Karpal Singh & Co.*
*For the defendant-Noraini bte Abdul Rahman, AG's Chambers*

## JUDGMENT

**Wan Adnan Bin Ismail J.**
By this summons the plaintiff seeks the following:

A declaration that the plaintiff had a legal right to be represented by an advocate and solicitor at the local enquiry held at the Bilek Gerakan, Suruhanjaya Pilihanraya Malaysia, Paras 8, Menara Bank Pembangunan, Kuala Lumpur on 25 October 1993 in respect of Bahagian Pilihanraya Parlimen P.101 Seputeh Dalam Negeri Wilayah Persekutuan, Kuala Lumpur;

A declaration that the denial by the defendant in allowing the plaintiff to be represented by an advocate & solicitor at the said enquiry has rendered the proceedings null and void, unconstitutional and of no effect thereby rendering the recommendations for Parliamentary and State Constituencies in the States of Malaya as reviewed by the defendant in 1993 a nullity;

The facts are not in dispute.

The plaintiff is a Political Secretary to the Dewan Rakyat Opposition Leader, Mr. Lim Kit Siang and a registered voter of Siputeh Parliamentary Constituency P101.

Sections 4 and 5 of Part 11 of the Thirteenth Schedule to the Federal Constitution (the said Schedule) provide as follows:

> 4. Where the Election Commission have provisionally determined to make recommendations under clause (2) of Article 113 affecting any constituency, they shall inform the Speaker of the House of Representatives and the Prime Minister accordingly, and shall publish in the Gazette and in at least one newspaper circulating in the constituency a notice stating -
>
> (a) the effect of their proposed recommendations, and (except in a case where they propose to recommend that no alteration be made in respect of the constituency) that a copy of their recommendations is open to inspection at a specified place within the constituency; and
> (b) that representations with respect to the proposed recommendations may be made to the Commission within one month after the publication of such notice.
>
> and the Commission shall take into consideration any representations duly made in accordance with any such notice.
>
> 5.Where, on the publication of the notice under s. 4 of a proposed recommendation of the Election Commission for the alteration of any constituencies, the Commission receive any representation objecting to the proposed recommendations from —
>
> (a) the State Government or any local authority whose area is wholly or partly comprised in the constituencies affected by the recommendation; or
> (b) a body of one hundred or more persons whose names are shown on the current electoral rolls of the constituencies in question,

> the Commission shall cause a local enquiry to be held in respect of those constituencies.

The notice as required by s. 4 was published in the Gazette Jil. 37 No. 15 Tambahan 2 dated 23 July 1993. Pursuant to s. 4(b) the plaintiff and 122 registered voters of Seputeh Constituency signed a memorandum dated 17 August 1993 objecting to the proposed recommendations which affected the said constituency. The memorandum was submitted to the defendant. By letter dated 4 October 1993 the plaintiff and the other voters were requested by the defendant to attend a local enquiry to be held on 25 October 1993 at 9.30 a.m. at the defendant's Bilik Gerakan at Menara Bank Pembangunan, Kuala Lumpur.

The plaintiff attended the enquiry at the appointed time and place with his Counsel. He formally applied to the defendant to be represented by Counsel but his application was turned down.

The learned Counsel for the plaintiff contends that the plaintiff has a legal right to be represented by Counsel at the enquiry. The defendant has no power to deny the plaintiff's right. He relies for his contention on the provisions of s. 6 of the said Schedule and s. 18 of the Commissions of Enquiry Act 1950 (the Act).

Section 6 of the said Schedule provides as follows:-

> 6. In relation to any enquiry held under s. 5 the Election Commission shall have all the powers conferred on Commissioners by the Commissions of Enquiry Act 1950.

Section 18 of the Act provides as follows:

> 18. Any person whose conduct is the subject of enquiry under this Act, or who is in any way implicated or concerned in the matter under enquiry, shall be entitled to be represented by an advocate at the whole of the enquiry; ...

By virtue of s. 6 of the said Schedule, the defendant becomes vested "with all the powers conferred on Commissioners ..." Only powers are vested. What are the powers of the Commissioners under the Act? They are mainly those in s. 8 of the Act. Section 18 has no application. This section speaks of the right to be represented by Counsel of a person at the enquiry under the Act. Section 6 refers to the powers of the Commissioners under the Act and not to the rights of persons implicated or concerned in the matter under enquiry under the Act. Therefore the plaintiff cannot rely on this section to claim that he has a legal right to be represented by Counsel at an enquiry held under s. 5 of the said Schedule.

As there is no provision in the Federal Constitution particularly the said Schedule which gives the plaintiff the right to be represented by Counsel at the enquiry, I find that he has no right to be legally represented.

In *Enderby Town Football Club Ltd. v. Football Association Ltd.* [1970] 3 WLR 1021 Lord Denning M.R. said:

> The case thus raises this important point: Is a party who is charged before a domestic tribunal, entitled as of right to be legally represented? Much depends on what the rules say about it. When the rules say nothing, then the party has no absolute right to be legally represented. It is a matter for the discretion of the tribunal. They are masters of their own procedure; and, if they, in the proper exercise of their discretion, decline to allow legal representation, the courts will not interfere.

This principle was adopted in the Singapore case of *Sithambaran v. Attorney-General* [1972] 2 MLJ 175.

It is my view that, it is at the discretion of the defendant whether or not to allow the plaintiff to be represented by Counsel at the enquiry. If the discretion has been properly exercised the Court will not interfere.

The plaintiff does not allege improper exercise of discretion as his contention is that the defendant has no discretion at all in the matter. Be that as it may, I find that the defendant had exercised their discretion properly.

Datuk Haji Abdul Rashid bin Haji Abdul Rahman, the Secretary of the defendant in the affidavit-in-reply (Enc.10) said in paragraph 4 as follows:

> 4. Defendan tidak menafikan bahawa plaintif ada membuat permohonan secara lisan untuk diwakili oleh seorang peguam. Walau bagaimanapun setelah menimbang permohonan plaintif, defendan berpendapat bahawa plaintif tidak perlu diwakili oleh peguam.

And at paragraph 6 he said:

> 6. Defendan selanjutnya menyatakan bahawa plaintif telah dapat menyampaikan penghujahan dengan baik dan jelas ketika merujuk kepada bantahan dan cadangan bertulis beliau (Eksibit TCK-4) semasa representasi tersebut.

I also find that plaintiff was not denied a reasonable opportunity of being heard. The document (Ex. TCK-4) containing his objections and proposals which he submitted to the defendant at the enquiry was quite comprehensive. I agree with Wee Chong Jin CJ when he said in *V.C. Jacob v. Attorney-General* [1970] 2 MLJ 133:

> ... the committee of inquiry has not denied the plaintiff a reasonable opportunity of being heard merely because it has refused the plaintiff's request to be represented before it by an advocate and solicitor.

I dismissed the plaintiff's application with costs.

**WILLIAM JACKS & CO. (M) SDN. BHD.**

**v.**

**CHEMQUIP (M) SDN. BHD. & ANOR.**

HIGH COURT, KUALA LUMPUR
DATO' HAJI ABU MANSOR BIN ALI J.
[CIVIL SUIT NO. D5-22-870 OF 1990]
14 JANUARY 1993

***CONTEMPT: Application for committal of company directors - Diversion of orders placed by plaintiff's customers to 1st defendant - Injunction obtained by plaintiff and served on defendants - Breach of injunction order - Anton Piller order obtained - Evidence of defendants' breach seized - Whether defendants were guilty of contempt - Whether claim to being "sleeping directors" a defence to committal for contempt.***

***SENTENCING: Custodial sentence ordered until contempt purged - Grounds of sentencing - Failure by defendants to comply with injunction order - Disobedience blatant - Orders of Court to be obeyed - Whether wrong done to administration of justice can be cured by payment of damages to plaintiff.***

The plaintiff was appointed under an exclusive agency agreement to distribute Lightin Proprietary Ltd. Singapore's (LPL) products in Malaysia. The 2nd defendant whilst an employee of the plaintiff and in breach of the terms of her employment diverted orders placed by a customer of the plaintiff to the 1st defendant where she later became a director. On 30 May 1990 the plaintiff obtained and served on both defendants a mandatory injunction restraining them from *inter alia* delivering, installing or causing to be installed the equipment diverted to the 1st defendant.

The plaintiff applied for committal of the defendants for contempt on the ground that the defendants had breached the injunction order by delivering and/or causing to be delivered the equipment in question to one, Ancom Bhd. on 20 July 1990. Evidence of the purchase orders diverted and delivery note were seized from LPL's premises during the execution of an Anton Piller order obtained by the plaintiff in Singapore. The plaintiff claimed that the defendants cicumvented the injunction by getting LPL to deliver the equipment directly to Ancom instead of to the 1st defendant as originally intended and in order that it would not be traced to them, the defendants used Oilquip, which shared a common director with the 1st defendant, to